9 Common Performance Review Pitfalls to Avoid

A veteran HR consultant who knows the ropes urged me to do a story about the pitfalls of performance review. "Performance reviews are hard to get right," she insisted. "And when things do go wrong, it hurts productivity, retention, and morale." She's right. But, as a lawyer, I also appreciate how performance review SNAFUs can also get a company into legal trouble. So, to meld our minds, here's a list of 9 common performance review mistakes you need to avoid.

Trap 1. Selective & Manipulative Use of Performance Review

Instead of a platform for improvement, a negative performance review becomes a dirty trick/pretext when the reviewer times it to tee up termination, denying a raise or bonus, etc. **Example:** After 13 years of not reviewing her performance, a bank hit an accountant with a highly negative performance review just before she was scheduled for a raise. Not only did the accountant not get the raise, she got a pink slip soon thereafter. The Ontario court found no just cause to terminate for negative performance and awarded the accountant $20,000 [*Black v. Robinson Group Ltd*., 2004 CanLII 9235 (ON CA)].

Trap 2. Reviewing Some Employees but Not Others

Inconsistent use of performance reviews becomes a lightning rod for liability, especially when the employees on the receiving end of the negative review are protected by human rights laws. Thus, for example, providing performance reviews only to employees who are underperforming might look like discriminatory treatment when all or most of those employees are black or female. Subsequently using data from those performance reviews to base decisions about who to retain, train, promote, etc. magnifies the discriminatory impact.

Trap 3. Using A Biased Appraisal Process

Take a hard and objective look at your current appraisal methods to ensure they're not biased for or against particular types of people or positions. The potential for hidden bias increases at companies that use a uniform appraisal form regardless of its suitability to the particular position. Thus, for example, a form that emphasizes creativity and communication may skew in favour of employees in marketing but against employees in finance and accounting.

Trap 4. ‘Horns & Halos’ Effect Distortion

Studies suggest that managers may perceive individuals as being naturally good or bad at their jobs on the basis of things that don’t actually affect performance, such as personality clashes or, worse, stereotypes based on race, sex, religion, disability, etc. Having decided on the horns or halos, managers then look for information that confirms their judgment in appraising performance.

Trap 5. Deliberate Bias

Managers may have a personal agenda against the employees they review. Thus, being the manager’s current lover is likely to boost an employee’s score while being an ex-lover has the opposite effect. Or, managers may deliberately pan an outstanding employee whose talent or ambition makes them feel threatened. More nefariously, managers may have personal biases, whether deliberate or subconscious, against certain minorities, ethnic groups, or protected classes.

Trap 6. Recency Bias

While performance review is supposed to encompass a period long enough to provide a representative sample, human memory has a tendency to overemphasize the most recent events. Recency bias can lead to distorted performance appraisal, such as where an employee exhibiting stellar performance over 11 months messes up in month 12, resulting in a negative annual performance review.

Trap 7. Not Offering Employees Meaningful Takeaway

Pivoting from bias to mechanics, performance review is a means to an end, not an end in and of itself. The goal is to communicate where employees need to go from here. This imperative has significant implications for not only productivity but liability. Thus, a negative performance review isn’t enough to prove the fair warning of termination required to demonstrate just-cause to terminate for poor performance. If termination really is in the cards, you must also warn employees that they could lose their job if they don’t improve. **Example:** An Ontario court found that a negative performance review telling a collection agent to be careful and that the company would be watching wasn’t fair warning because it didn’t expressly say his job was in jeopardy and that he’d be fired immediately if he didn’t improve [*Fanous v. Total Credit Recovery Ltd*., [2006] OJ No 3036].

Trap 8. Sending Mixed Signals

Even an explicit warning may be compromised when accompanied by a positive or blame-deflecting message that sends a mixed message. **Example:** A Saskatchewan court found that a performance review expressly listing a radio station manager’s shortcomings and warning him to get it together or else wasn’t fair warning because it also contained statements praising his performance and absolving him of blame for the station’s problems [*Schutte v. Radio CJVR Ltd.* (case overturned 2 years later by Sask. Court of Appeal on other grounds)].

Trap 9. Not Giving Poor Performers Enough Time to Improve

In addition to fair warning, you must give employees ample time and opportunity to improve the performance issues you identify during the performance review. Best Practice: Establish a performance improvement program that includes clear, measurable goals and a realistic schedule for achieving them. **Example:** An Ontario court found there was no just cause to fire a senior employee despite repeated negative performance reviews and warnings. What the employee needed and didn’t get was a longterm improvement plan. Instead, he got just a series of deadlines for accomplishing unrealistic improvement goals [*Kurtz v. Carquest Canada Ltd.*, 2015 ONSC 7997 (CanLII)].